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*Attorneys for the Chapter 11 Debtors and
Debtors In Possession*

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

ASTRIA HEALTH, *et al.*,

Debtors and
Debtors in
Possession.¹

Chapter 11
Lead Case No. 19-01189-11
Jointly Administered

**DEBTORS' MOTION TO REJECT, PURSUANT TO 11
U.S.C. § 365(A), CERTAIN AGREEMENTS WITH
FIRST CHOICE HEALTH NETWORK *NUNC PRO
TUNC* TO NOVEMBER 18, 2019; DECLARATION OF
JOHN M. GALLAGHER IN SUPPORT THEREOF**

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

**MOTION TO REJECT
FIRST CHOICE AGREEMENTS**

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US Active 113565588/V-4

1 Astria Health, a Washington nonprofit public benefit corporation (“Astria”),
2 and the above-referenced affiliated debtors and debtors in possession (the “Debtors”)
3 under chapter 11 of title 11 of the United States Code, §§ 101 *et seq.* (the “Bankruptcy
4 Code”),² in these chapter 11 cases (the “Chapter 11 Cases”), by and through the
5 undersigned counsel of record, respectfully request the entry of an order pursuant to
6 11 U.S.C. § 365(a), authorizing the Debtors to reject certain Healthcare Facility
7 Agreements (the “Agreements,” as further defined herein) between First Choice
8 Health Network, Inc. (“FCHN”) and the Debtors SHC Medical Center - Toppenish
9 (“Toppenish”), SHC Medical Center - Yakima (“Yakima”), and Sunnyside
10 Community Hospital Association (“Sunnyside,” and referred to collectively with
11 Toppenish and Yakima as the “Hospitals”).

12 I. JURISDICTION AND VENUE

13 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
14 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the
15

16 ² All references to § herein are to sections of the Bankruptcy Code. All references to
17 “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Procedure.
18 All references to “LBR” are to provisions of the Local Bankruptcy Rules of the
19 United States Bankruptcy Court for the Eastern District of Washington (the
20 “Bankruptcy Court”).

1 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for
2 this Motion is § 365(a).

3 II. BACKGROUND

4 A. General Background

5 1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a
6 voluntary petition for relief under the Bankruptcy Code. These Chapter 11 Cases are
7 being jointly administered before this Court. [Docket No. 10]. The Debtors are
8 operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

9 2. Debtor Astria, a Washington nonprofit corporation, is the direct or
10 indirect corporate member of several entities that make it the largest non-profit
11 healthcare system based in Eastern Washington. The Astria system is headquartered
12 in the heart of Yakima Valley, Washington, with operating hospitals in Yakima,
13 Sunnyside, and Toppenish, Washington.

14 3. The Astria system includes three Hospitals: Yakima, a 214-bed hospital
15 in Yakima, Washington; Sunnyside, a 38-bed critical access hospital in Sunnyside,
16 Washington; and Toppenish, a 63-bed hospital in Toppenish, Washington. In
17 addition to collectively having 315 licensed beds, the Hospitals have three active
18 emergency rooms and a host of medical specialties. The Astria system also has
19 outpatient Astria Health Centers (14 medical clinics and 24 specialty clinics), the
20
21

1 Ambulatory Surgical Center, Astria Hearing and Speech, and Astria Home Health
2 and Hospice.

3 4. The Astria system provides medical treatments to approximately
4 346,400 patients annually, including approximately 7,344 who spend at least one
5 night in its Hospitals during the year. Astria's necessity to the health and welfare of
6 the people of the Yakima Valley is evidenced by several facts, including having the
7 only open-heart surgery, neurosurgery, and elective cardiac catheterization programs
8 in Yakima County; the only hospitals in Sunnyside and Toppenish, Washington; and
9 the only obstetric services in the Lower Valley (both at Sunnyside and Toppenish).

10 5. The system currently employs approximately 1,500 employees (making
11 it one of the largest employers in the Yakima Valley), plus an additional 172 contract
12 personnel, and approximately 600 doctors have privileges at the Hospitals.

13 6. On May 24, 2019, the Office of the United States Trustee (the "U.S.
14 Trustee") appointed an Official Committee of Unsecured Creditors in these Chapter
15 11 Cases.

16 7. Additional background facts on the Debtors, including an overview of
17 the Debtors' business, information on the Debtors' capital structure, and events
18 leading up to these Chapter 11 Cases, are contained in the *Declaration of John M.*
19 *Gallagher in Support of Emergency First Day Motions* [Docket No. 21].
20
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B. Facts Relevant to the Motion

8. FCHN contracts with medical providers to create a network of preferred provider organizations (the “PPO Network”) who agree to provide medical care to the members of FCHN’s healthcare plan (the “Covered Patients”) at certain rates that are lower than rates charged by providers who do not belong to the PPO Network.

9. Prepetition, each of the Hospitals entered into Agreements with FCHN,³ wherein they each agreed to pay a monthly fee to FCHN to belong to FCHN’s PPO Network. Specifically, Yakima agreed to pay FCHN \$12,412 per month, Toppenish agreed to pay FCHN \$706 per month, and Sunnyside agreed to pay FCHN \$1,756 per month for access to FCHN’s PPO Network. By belonging to the PPO Network, the Debtors hoped to attract the Covered Patients to the Hospitals. Under the Agreements, FCHN is also obligated to coordinate payment from payors to the Hospitals for medical services rendered to Covered Patients.

10. However, only a small percentage of the Debtors’ patients are Covered Patients. On average, the Debtors generate approximately \$5,000 of collectible revenues per month for medical services provided by the Hospitals to Covered

³ Yakima and Toppenish entered into the Agreement with FCHN on November 19, 1993 (as amended on August 1, 2012). Sunnyside entered into the Agreement with FCHN on October 4, 1993.

1 Patients. This is substantially less than the approximate \$15,000 of monthly fees paid
2 to FCHN under the Agreements so that the Hospitals may belong to the PPO
3 Network.

4 11. Also, the Covered Patients can access medical care from the Debtors'
5 hospitals through the use of other silent PPO networks.⁴ Thus, patient volume at the
6 Debtors' Hospitals would not decrease if the Hospitals were not members of the PPO
7 Network.

8 12. Accordingly, the Debtors are losing money each month under the
9 Agreements and have no continued need to belong to FCHN's PPO Network.
10 Rejection of the Agreements is in the best interests of the Debtors' estates.

11 **III. ARGUMENT**

12 **A. The Debtors Have the Right to Reject the Agreements Pursuant to §** 13 **365(a).**

14 Section 365(a) authorizes a debtor in possession, "subject to the Court's
15 approval . . . [to] assume or reject any executory contract or unexpired lease of the
16 debtor." 11 U.S.C. § 365(a) (made applicable by § 1107(a)). A debtor in possession
17 may assume or reject executory contracts for the benefit of its estate and its creditors.

18 ⁴ A silent PPO network is an organization that accesses a discounted rate for medical
19 services from a health care provider without direct authorization from the provider to
20 do so.

1 *Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.)*,
2 476 F.2d 665, 671 (9th Cir. 2007); *In re Chi-Feng Huang*, 23 B.R. 798, 801 (B.A.P.
3 9th Cir. 1982) (“The primary issue is whether rejection would benefit the general
4 unsecured creditors.”). “The purpose of the power to reject is to augment the estate
5 of the debtor.” *Chi-Feng Huang*, 23 B.R. at 800 (quoting Krasnowiecki, *The Impact*
6 *of the New Bankruptcy Reform Act on Real Estate Development and Financing*, 53
7 AM. BANKR. L.J. 363, 382 (1979)).

8 Section 365 does not provide a definition of what constitutes an executory
9 contract. However, the Ninth Circuit has adopted the standard *Countryman*
10 definition of an executory contract, which is a contract “under which the obligations
11 of both the bankrupt and the other party to the contract are so far unperformed that
12 the failure of either to complete performance would constitute a material breach
13 excusing the performance of the other.” *See, e.g., In re Robert L. Helms Constr. &*
14 *Dev. Co., Inc.*, 139 F.3d 702, 705 (9th Cir. 1998).

15 Here, the Hospitals and FCHN each have material unperformed obligations
16 under the Agreements. Specifically, among other things, the Hospitals must provide
17 medical services to Covered Patients and pay a monthly fee to FCHN. FCHN,
18 conversely, must provide the Hospitals access to the PPO Network and coordinate
19 payment from payors to the Hospitals for medical services rendered. Thus, the
20 Agreements are executory contracts and the Debtors have the right to reject the

1 Agreements pursuant to § 365(a).

2 **B. Rejection of the Agreements Is Within the Debtors' Sound Business**
3 **Judgment.**

4 In reviewing a debtor in possession's decision to assume or reject an executory
5 contract, a bankruptcy court should apply the "business judgment test" to determine
6 whether to approve the assumption or rejection. *See NLRB v. Bildisco & Bildisco*,
7 465 U.S. 513, 523, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984) (recognizing that the
8 business judgment rule is used in reviewing motions to reject executory contracts);
9 *Pomona Valley Med. Grp.*, 476 F.2d at 670.

10 The business judgment standard requires that the bankruptcy court "presume
11 that the debtor-in-possession acted prudently, on an informed basis, in good faith,
12 and in the honest belief that the action taken was in the best interests of the
13 bankruptcy estate." *Pomona Valley Med. Grp.*, 476 F.2d at 670. As a result, the
14 bankruptcy court should approve rejection "unless it finds that the debtor-in-
15 possession's conclusion that rejection would be 'advantageous is so manifestly
16 unreasonable that it could not be based on sound business judgment, but only on bad
17 faith, or whim or caprice.'" *Id.* (quoting *Lubrizol Enters. v. Richmond Metal*
18 *Finishers*, 726 F.2d 1043, 1047 (4th Cir. 1985)).

19 The Debtors are losing money each month under the Agreements and no longer
20 have a need to access FCHN's PPO Network. Therefore, the Debtors have decided
21 to reject the Agreements. As discussed, the Hospitals each entered into the

1 Agreements with FCHN to belong to the PPO Network and provide medical services
2 to Covered Patients to increase revenues at the Hospitals. However, only a small
3 percentage of the Debtors' patients are Covered Patients. The collectible revenues
4 generated from medical services provided to these Covered Patients are substantially
5 less than the monthly fees paid under the Agreements. Thus, the Hospitals are losing
6 money each month under the Agreements.

7 Moreover, if the Hospitals were not members of the PPO Network, the
8 Covered Patients could still access medical services at the Hospitals through the use
9 of other silent PPO networks. Thus, the rejection of the Agreements will not reduce
10 patient volume at the Hospitals.

11 Accordingly, rejection of the Agreements as of November 18, 2019 (the date
12 of this Motion) (*see In re At Home Corp.*, 392 F.3d 1064 (9th Cir. 2004) (approving
13 retroactive rejection of lease to date of motion to reject)), is in the estates' best
14 interests, and such a decision falls squarely within the Debtors' sound business
15 judgment.

16 V. CONCLUSION

17 For all the foregoing reasons and such additional reasons as may be advanced
18 at or prior to the hearing on this Motion, the Debtors respectfully request that this
19 Court enter an order authorizing them to reject the Agreements as of November 18,
20 2019, and granting such other and further relief as is just and proper under the

1 circumstances.

2 Dated: November 18, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
SAM A. ALBERTS

4 By /s/ Samuel R. Maizel
5 SAMUEL R. MAIZEL

6 Attorneys for the Chapter 11 Debtors
and Debtors In Possession

21 **MOTION TO REJECT
FIRST CHOICE AGREEMENTS**

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1. I am the President and Chief Executive Officer (“CEO”) of Astria Health (“Astria”). I am employed by AHM, Inc. (“AHM”), a nondebtor entity that provides management services to Astria and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”).

3. First Choice Health Network, Inc. (“FCHN”) contracts with medical providers to create a network of preferred provider organizations (the “PPO Network”) who agree to provide medical care to the members of FCHN’s healthcare plan (the “Covered Patients”) at certain rates that are lower than rates charged by providers who do not belong to the PPO Network.

4. Prepetition, Debtors SHC Medical Center - Toppenish (“Toppenish”), SHC Medical Center - Yakima (“Yakima”), and Sunnyside Community Hospital Association (“Sunnyside,” and referred to collectively with Toppenish and Yakima as the “Hospitals”) each entered into Healthcare Facility Agreements (the

1 “Agreements”) with FCHN,⁵ wherein they each agreed to pay a monthly fee to FCHN
2 to belong to FCHN’s PPO Network. Specifically, Yakima agreed to pay FCHN
3 \$12,412 per month, Toppenish agreed to pay FCHN \$706 per month, and Sunnyside
4 agreed to pay FCHN \$1,756 per month for access to FCHN’s PPO Network. By
5 belonging to the PPO Network, the Debtors hoped to attract the Covered Patients to
6 the Hospitals. Under the Agreements, FCHN is also obligated to coordinate payment
7 from payors to the Hospitals for medical services rendered to Covered Patients.

8 5. However, only a small percentage of the Debtors’ patients are Covered
9 Patients. On average, the Debtors generate approximately \$5,000 of collectible
10 revenues per month for medical services provided by the Hospitals to Covered
11 Patients. This is substantially less than the approximate \$15,000 of monthly fees paid
12 to FCHN under the Agreements so that the Hospitals may belong to the PPO
13 Network.

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18 ⁵ Yakima and Toppenish entered into the Agreement with FCHN on November 19,
19 1993 (as amended on August 1, 2012). Sunnyside entered into the Agreement with
20 FCHN on October 4, 1993.


6. Also, the Covered Patients can access medical care from the Debtors' hospitals through the use of other silent PPO networks.⁶ Thus, patient volume at the Debtors' Hospitals would not decrease if the Hospitals were not members of the PPO Network.

7. Thus, I believe that rejection of the Agreements is in the best interests of the Debtors' estates. The Debtors are losing money each month under the Agreements and have no continued need to belong to FCHN's PPO Network.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 18, 2019

ASTRIA HEALTH

By: 
John M. Gallagher
Chief Executive Officer

⁶ A silent PPO network is an organization that accesses a discounted rate for medical services from a health care provider without direct authorization from the provider to do so.